IN THE HIGH COURT OF BOMAY AT GOA

CIVIL APPLICATION NO. 266/2005
IN
WRIT PETITION NO. 107/2005

Shri Filipe Nery Rodrigues. ..... Petitioner.

V/s.

1. Shri Sadanand Mhalu Shet.

2. Speaker, Goa Legislative Assembly,

3. Shri Vishwas Satarkar. ..... Respondents.

Shri S. K. Kakodkar, Senior Advocate with Shri M. S. Sonak, Advocate for the petitioner.

Shri V. P. Thali, Advocate for the respondent No.1.

Shri S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the respondent No.2.

Shri A. F. Diniz, Advocate for the respondent No.3.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 23RD AUGUST, 2005.

P.C.

Heard.

2. On 16th August, 2005, we passed the following

Order :

> "By Order dated 8th August, 2005 the earlier Division Bench directed this matter to be posted on 16th August, 2005 peremptorily. The Division Bench also directed the matter to be placed first on board for hearing at 2.30 p.m. in the afternoon session. As the First Appeals for final hearing and order matters and Income Tax Appeals for final hearing are only assigned to this Bench in the afternoon session, it is not possible to take up the Petition for final hearing in the afternoon session. In the circumstances, we direct the Office to post the Writ Petition for final hearing first on board in the hearing list. After the Admission matters are over in the morning session if any time is left, this Writ Petition shall be taken up for hearing; in the morning session.
>
> Order accordingly."

3. Thereafter the present civil application has been made by the petitioner praying therein that this Court be pleased to grant ad interim stay of the order of the Honourable Speaker dated 28th February, 2005 pending the hearing and final disposal of the writ petition.

4. The learned Senior Counsel for the petitioner urged before us that the necessity of making this application arose as the petitioner apprehends that the Election Commission may announce bye-election to the Velim Constituency and if that is done, grave and irreparable harm will be caused to the petitioner. In this connection, the learned Senior Counsel for the petitioner invited our attention to Sections 150 and 151-A of the Representation of the People Act, 1950.

5. Mr. S. G. Dessai, learned Senior Counsel for the respondent No.2 invited our attention to the communication dated 4th March, 2005. Thereby the Secretary, Goa Legislative Assembly informed the Secretary, Election Commission of India that in view of the application made by the petitioner before the Honorable Speaker on 4th March, 2005 for suspension of the Order dated 28.2.2005 and that the petitioner was in process of filing a writ petition before the High Court to challenge the Order dated 28.2.2005 that there is no clear vacancy in the Velim Constituency and no notification of the said vacancy has been issued or published in the Official Gazette as required under the Rules of Procedure and Conduct of Business of Goa Legislative Assembly. The said communication dated 4th March, 2005 still holds the field. No

notification of the vacancy in the Velim Constituency has been issued or published in the Official Gazette. The apprehension of the petitioner, therefore, that the Election Commission might announce the bye-election to the Velim Constituency is not well-founded. There is no likelihood of the Election Commission announcing the bye-election to the Velim Constituency since the the Secretary, Goa Legislative Assembly intimated the Secretary, Election Commission of India that there was no clear vacancy in that constituency.

6. We have already directed the writ petition to be posted for final hearing in the hearing list. We have also observed in our order dated 16th August, 2005 that after the admission matters are over in the morning session, if any time is left, this writ petition shall be taken up for hearing in the morning session.

7. In view thereof, we are satisfied that there is no necessity of any interim order. Civil application is disposed of accordingly.

R.M. LODHA, J.

N.A. BRITTO, J.